



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2001 Assembly Bill 109	Assembly Substitute Amendment 1 and Assembly Amendment 2 to Assembly Substitute Amendment 1
Memo published: November 5, 2001 Contact: Anne Sappenfield, Senior Staff Attorney (267-9485)	

2001 Assembly Bill 109 requires school boards to obtain the consent of a pupil's parent or guardian before conducting any written or recorded survey or questionnaire of the pupil that may reveal specified information regarding the pupil or the pupil's family, including political affiliations, mental or psychological problems, and sexual behavior or attitudes. If the pupil is an adult, the pupil's consent must be obtained.

Under the bill, in order to obtain consent for the survey or questionnaire, an official, employee or agent of the school board must mail a copy of the survey or questionnaire along with a request for consent at least 10 days before conducting the survey or questionnaire. Consent is considered to be given if the pupil or pupil's parent or guardian fails to respond to the request before the date of the survey or questionnaire.

Under the bill, any person who conducts a survey or questionnaire for which consent has not been obtained is subject to a forfeiture of not less than \$25 nor more than \$300 for each violation. Each survey or questionnaire of each pupil constitutes a separation violation.

The bill specifies that these forfeitures are enforced by action on behalf of the state by the Attorney General or by the district attorney (DA) of any county where a violation occurs. In addition, under the bill, the Attorney General or DA may commence an action, separately or in conjunction with a forfeiture action, to obtain other legal or equitable relief as may be appropriate under the circumstances. If the DA refuses or otherwise fails to commence an action within 20 days after receiving a verified complaint, the person making the complaint may commence an action in the name, and on behalf, of the state.

Assembly Substitute Amendment 1 removes the requirement to mail a copy of a survey or questionnaire to a pupil or the pupil's parent or guardian. Instead, an official, employee or agent of the

school board must notify the pupil or the pupil's parent or guardian of the impending survey or questionnaire at least 10 days before conducting the survey or questionnaire. The notice must include the purpose of the survey or questionnaire, information on how to review a copy of the survey or questionnaire, and a request for consent. As under the bill, consent is considered to have been given if the pupil or the pupil's parent or guardian fails to respond to the request for consent.

The substitute amendment also does not include the provisions regarding enforcement of the consent requirement by the Attorney General or allow the person making the complaint to bring an action.

Assembly Amendment 2 to the substitute amendment provides that if a person conducts a survey or questionnaire for which consent has not been obtained, the school district is subject to a forfeiture of not less than \$25 nor more than \$300 for each violation. Under the amendment, each survey or questionnaire conducted constitutes a violation.

The amendment also specifies that if a person does not obtain consent in the manner required under the bill or requires a student who requests to discuss the survey or questionnaire with his or her parent or guardian to participate in the survey or questionnaire, the general penalty provision under s. 939.61, Stats.,* applies to the school district, not to an official, employee or agent of the school board.

The Assembly adopted Assembly Amendment 2 to Assembly Substitute Amendment 1 on a vote of Ayes, 86, Noes, 9; adopted Assembly Substitute Amendment 1 on a voice vote; and passed Assembly Bill 109 on a vote of Ayes, 54, Noes, 41, on November 1, 2001.

AS:tlu:rv;ksm;jal

* The penalty under s. 939.61, Stats., is a forfeiture not to exceed \$200.